

SCOTT A. GRAY,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 92-122-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 24, 1992

On February 25, 1992, the Board of Indian Appeals (Board) issued an order docketing and dismissing an appeal from Scott A. Gray concerning an October 21, 1991, letter from the Muskogee Area Director, Bureau of Indian Affairs (Area Director), assessing additional royalty under Gray's Osage oil and gas lease number 1098. 21 IBIA 200. The appeal was dismissed on the grounds that no notice of appeal from the decision had been filed with the Board, as is required by 43 CFR 4.332(a).

On March 18, 1992, the Board received a letter from Lee R. Jones, Jr., seeking reconsideration of the Board's dismissal of Gray's appeal. Jones indicated that he was the operator for three Osage oil and gas leases, including lease number 1098, Scott A. Gray; lease number 1186, NOHUD, Inc.; and lease number 189, Lee R. Jones, Jr. Jones stated that appeals had been filed in regard to each of these leases. Copies of notices of appeal addressed to the Board at its correct address were enclosed for each lease.

The Area Director issued approximately 545 such notices of additional royalty assessments on October 21, 1991. Each letter informed the lessee:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney, and must be mailed within thirty days of the effective date of this decision (15 days from the date of this letter). * * * You must send copies of your notice of appeal to (1) the Assistant Secretary-Indian Affairs * * *, (2) each interested party known to you, and, (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed this decision will be final for the Department of the Interior at the expiration of the appeal period * * *. No extension of time may be granted for filing a notice of appeal.

Although notices of appeal with regard to the three leases identified above were apparently addressed to the Board at its correct address, the Board did not receive any of the notices.

43 CFR 4.332(a) states that a notice of appeal from the decision of a BIA Area Director must be filed with the Board, and that an untimely notice of appeal must be dismissed. This information was also provided to appellant in the Area Director's decision.

The Board has accepted untimely notices of appeal when the untimeliness is the result of incorrect information given to the appellant by BIA. See, e.g., Lovelock Paiute Tribe v. Acting Phoenix Area Director, 18 IBIA 249 (1990); Washoe Tribe v. Phoenix Area Director, 18 IBIA 192, 193 n.1 (1990). Cf. 25 CFR 2.13(c): "Notwithstanding any other provision of this section, an official deciding an appeal shall allow late filing of a document, including a notice of appeal, where the official finds that the misdirection is the fault of the government."

However, when BIA gives correct instructions for filing a notice of appeal, and an appellant's failure to follow those instructions results in an untimely appeal to the Board, there is no way the mandate in 43 CFR 4.332(a) may be avoided. The Board is required by that section to dismiss an untimely notice of appeal. McLean v. Portland Area Director, 18 IBIA 311 (1990); Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989).

The materials submitted in regard to the three leases fail to show that they are not governed by the cases cited above. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Gray's petition for reconsideration of the Board's February 25, 1992, dismissal of his appeal, and the appeals from Jones and NOHUD, Inc., from the Muskogee Area Director's October 21, 1991, decisions are dismissed as not being timely filed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge